

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	I.D. No. 30103873DI
	)	
JOSEPH L. FOLKS,	)	
	)	
Defendant.	)	

UPON CONSIDERATION OF DEFENDANT’S  
*PRO SE* MOTION FOR POSTCONVICTION RELIEF  
**SUMMARILY DISMISSED.**

Submitted: March 14, 2007  
Decided: April 19, 2007

This 19<sup>th</sup> day of April, 2007, it appears to the Court that:

1. On February 25, 1993, a jury found Joseph L. Folks (“Folks”) guilty of two counts of unlawful sexual intercourse in the first degree.<sup>1</sup> He was sentenced to 30 years in prison. The Supreme Court affirmed Folks’ conviction and sentence on direct appeal. Since then, Folks has filed two motions for postconviction relief, both of which were denied by this Court. Folks did not appeal the denial of his first postconviction relief motion; however he did appeal the denial of his second motion for postconviction

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<sup>1</sup> DEL. CODE ANN. tit. 11, § 775 (1987).

relief, which was affirmed by the Supreme Court. Now before the Court is Folks' third motion for postconviction relief.<sup>2</sup>

2. Folks' motion, filed *pro se*, asserts five grounds on which he claims his rights were violated: (1) lack of jurisdiction to prosecute; (2) actual innocence claim/suppression of favorable evidence; (3) ineffective assistance of counsel; (4) gross miscarriage of justice; and (5) abuse of judicial discretion. Specifically, Folks claims the State failed to obtain jurisdiction to prosecute him because the State did not acquire a true bill from a sworn grand jury and, therefore, violated Article I, § 8 of the Delaware Constitution and Superior Court Criminal Rule 7(e). Folks also claims that the Court, the State, and defense counsel concealed from him favorable, although unspecified, evidence prior to his trial and, had that evidence been introduced, he would have been exonerated because there was no DNA or physical evidence linking Folks with the crimes. Folks further maintains that his defense counsel was in collusion with this Court and the State, and conspired to mislead the jury and withhold crucial, although unspecified, evidence that would have refuted the State's assertion that the victim was a virgin. Lastly, Folks contends that the Court's exclusion of two affidavits, submitted by males who stated that the victim was sexually

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<sup>2</sup> See Docket 24, 36, 45, 49, 51, 52, 54, 60, 63.

promiscuous and not a virgin, was an abuse of judicial discretion and a gross miscarriage of justice.<sup>3</sup>

3. Prior to addressing the substantive merits of any claim for postconviction relief, the Court must first determine whether the defendant has met the procedural requirements of Superior Court Criminal Rule 61 (“Rule 61”).<sup>4</sup> If the procedural requirements of Rule 61 are not met, the Court should not consider the merits of a postconviction claim.<sup>5</sup>

4. Rule 61(i) imposes four procedural imperatives: (1) the motion must be filed within three years of a final order of conviction;<sup>6</sup> (2) any basis for relief must have been asserted previously in any prior postconviction proceeding; (3) any basis for relief must have been asserted at trial or on direct appeal as required by the court rules; and (4) any basis for relief must not have been formally adjudicated in any proceeding. However, under Rule 61(i)(5), the bars to relief under (1), (2) and (3) do not apply to a “claim that the court lacked jurisdiction or to a colorable claim that there was a

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<sup>3</sup> See Docket 63.

<sup>4</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990). See also *Bailey v. State*, 588 A.2d 1121, 1127 (Del. Super. Ct. 1991).

<sup>5</sup> *State v. Gattis*, 1995 WL 790961, at \*2 (Del. Super. Ct. Dec. 28, 1995) (citing *Younger*, 580 A.2d at 554).

<sup>6</sup> The motion must be filed within three years if the final order of conviction occurred before July 1, 2005, and within one year if the final order of conviction occurred on or after July 1, 2005. See Rule 61, annot. *Effect of amendments*.

miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”

5. In applying the procedural imperatives to this case, Folks’ claims of actual innocence/suppression of favorable evidence, ineffective assistance of counsel, gross miscarriage of justice, and abuse of judicial discretion, are all barred. First and foremost, the assertion of these claims is not timely as they were not asserted within three years of the Supreme Court’s mandate affirming Folks’ conviction and sentence, which occurred on June 28, 1994. And, with the exception of the ineffective of counsel claim, which has already been formally adjudicated in the preceding postconviction motions, Folks has failed to assert these claims at any stage of the trial proceedings, on direct appeal, or in his first two postconviction motions. What is more, there is no basis upon which to excuse the procedural bars to the assertion of these claims because they present no evidence of “a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”

6. More specifically, Folks’ contentions that the Court, the State, and defense counsel concealed favorable evidence from him (actual innocence/suppression of favorable evidence claim) and conspired to mislead the jury (ineffective assistance of counsel claim) are nothing but bald and unsubstantiated allegations for which he provides no corroboration or support. Folks is also mistaken in his belief that the Court abused its discretion, resulting in a gross miscarriage of justice, when it excluded from evidence statements/affidavits stating the 10-year-old victim was sexually promiscuous and not a virgin. Simply put, such evidence would not have been admissible because the victim was not of consenting age at the time of the crime.<sup>7</sup> Therefore, the Court can only conclude that Folks has *not* presented “colorable” claims that would overcome the procedural bars.

7. With respect to Folks’ remaining claim that there was a lack of jurisdiction to prosecute, the “jurisdiction exception to the procedural bars contained in Rule 61(i)(5) requires the Court to address [this] argument[.]”<sup>8</sup> To reiterate, Folks argues the State failed to obtain jurisdiction to prosecute him by not acquiring a true bill from a sworn grand jury and, as such, violated Article I, § 8 of the Delaware Constitution and Superior Court

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<sup>7</sup> See DEL. CODE ANN. tit. 11, §§ 3508, 3509 (1987).

<sup>8</sup> *State v. Lum*, 2007 WL 1041415, at \*3 (Del. Super. Ct. Mar. 22, 2007).

Criminal Rule 7(e). In support of that claim, Folks makes the following statement in his motion:

Count #1 is alleged to have been filed in May of 1991 before or on 13<sup>th</sup> of that month. Count #2 is alleged to have been filed in April of 1991. Yet on the response and motion to affirm from the Supreme Court of Delaware verifies [sic] that the charges are recorded to have been filed in May of 1991. Furthermore, the Court docket sheet shows that the two charges the Defendant was convicted of were filed 5-22-91 not on or before.<sup>9</sup>

Although the Court is somewhat perplexed as to what Folks is alleging in the preceding statement, his claim is nevertheless without merit. A review of the docket reveals a grand jury did issue a true bill indicting Folks on two counts of unlawful sexual intercourse in the first degree, two counts of unlawful sexual intercourse in the third degree, and attempted unlawful sexual intercourse in the third degree. The Court finds no defects in the document itself or the dates contained therein.

8. For the foregoing reasons, Folks' motion for postconviction relief is **SUMMARILY DISMISSED**.

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

Original to Prothonotary

cc: Joseph L. Folks  
Richard G. Andrews, Esq.

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<sup>9</sup> See Docket 63.